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No. 690

In the

Supreme Court of the United States

OCTOBER TERM 1961

G. C. NUNN, RECEIVER, HORACE SMITH, FRED NEMEROVSKI, HARRY BALLIS AND MYRTLE BALLIS,
Petitioners,

v.

R. L. FELTINTON, LYDIA M. FELTINTON, SAMUEL C. LURIE, JOSEPHINE M. LURIE, WILLIAM L. LURIE, Individually and as Trustee, and RITA M. LURIE,
Respondents.

PETITION FOR REHEARING

BOYD LAUGHLIN,
Midland, Texas.

F. H. PANNILL,
Midland, Texas.

MAURICE R. BULLOCK,
Fort Stockton, Texas.

GARLAND CASEBIER,
Midland, Texas.

STUBBEMAN, MCRAE, SEALY & LAUGHLIN,
Midland, Texas,
Of Counsel.

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PETITION FOR REHEARING

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners move the Court to set aside its Order of March 19, 1962, denying the Writ of Certiorari, and in support thereof state:

1.

Petitioners have prepared and submitted an Answer to Respondents' Brief; the Order denying certiorari was entered before this brief was received and it was not considered by the Court. Petitioners submit herewith said answer and request that the same be considered in connection with this

Petition, specifically the statement, or suggestion, by Respondents that the corporation made the Illinois statute a part of its charter, and adopted it as a provision for the succession to its assets, is shown to be not supported by the record. The charter of the Bank is not a part of the record. The Illinois statute in question is not adopted or referred to in the charter amendment increasing the capital stock. The statute in question must be held effective or ineffective of its own force as a statute and not as the act of the corporation.

2.

The Court of Appeals has affirmed a judgment denying Petitioners relief in a suit to recover the title and possession of an interest in land located in Texas and has cited in support of that decision the terms of an Illinois statute applicable to Illinois State Banks.

A holding that the statutes and laws of Texas are not exclusive in such cases but that the statutes of other States may be referred to and made the basis for a decision as to land located in Texas, is in clear and direct conflict with the numerous cases from this Court denying extraterritorial effect to State statutes for this purpose. On this showing, the writ should have been granted. But the writ has been denied. The denial of the writ cannot be taken as meaning that this Court has turned its back on 150 years of judicial precedent and this Court thereby has overruled the long line of cases holding that the statutes and laws of a State do not have, and cannot be given, extraterritorial effect as to the title

to and possession of interests in land in another State. If this Court had meant to do that, it would have said so, and it has not so stated.

So the decision is not the result of the direct application of an Illinois statute to land located in Texas; the decision may be based on the personal capacity of the receiver, successor, or liquidating official, and his personal relationship to the corporation as a legal entity.

In *Relfe v. Rundle*, 103 U. S. 222, 26 L. Ed. 337 (1881), this Court held that the Missouri Superintendent of Insurance in winding up the affairs of a Missouri corporation could, as a matter of right under the full faith and credit clause, appear in and defend a suit in Louisiana against the dissolved corporation. For this purpose and to this extent, the personal capacity of the receiver or successor, and his personal relationship to the corporation, has been established by this Court. It has been sustained again in *Clarke v. Williard*, 292 U. S. 112, 54 S. Ct. 615, but on a second appeal of this case, *Clarke v. Williard*, 294 U. S. 211, 55 S. Ct. 396, it was held that as to creditors claiming under attachments in another State, the receiver or successor could not impose the rule of distribution provided by the statute where the corporation was organized.

In *Fisher v. American United Life Insurance Company*, 314 U. S. 549, 62 S. Ct. 380, this Court again sustained the right and power of the receiver or successor to appear as a

party in the Courts of other States but held that he did not have the right to possession as against a receiver acting in the State where the property was located. In *Morris v. Jones*, 329 U. S. 545, 67 S. Ct. 451, the right of the receiver or successor to appear in the Courts of other States was recognized but this Court denied that he had the right to impose in those Courts the procedural restrictions provided in law of the corporation's domicile.

If there is to be deduced from these decisions a principle that the State which creates a corporation may, upon dissolution or insolvency, displace the officers, agents, and representatives of that corporation and substitute other agents or representatives selected by the State, so that their acts thereafter are the acts of the corporation through these representatives, then the facts in this case do not call for the application of such a principle. The administrative proceedings and the judicial proceedings in Illinois do not, by their terms, purport to remove the representative capacity of any person then acting nor to confer such capacity on a receiver, successor or liquidating official. Neither the corporation nor its officers were at any time confronted with that proposition, and, hence, at no time were they accorded notice of that proposition and an opportunity to be heard in opposition to it. For Illinois to sequester the representative powers of the corporate officials and confer them on others without notice that it proposed to do so, or had done so,

simply means that the stockholders' vested right to select the corporate representatives has been taken away without notice and without an opportunity to be heard on that specific issue, and Petitioners submit that this is a denial of due process.

For the reasons stated, Petitioners pray that the Order of March 19, 1962 be set aside, and that the writ be granted.

Respectfully submitted.

BOYD LAUGHLIN,
Midland, Texas.

F. H. PANNELL,
Midland, Texas.

MAURICE R. BULLOCK,
Fort Stockton, Texas.

GARLAND CASEBIER,
Midland, Texas.

STUBBEMAN, MCRAE, SEALY & LAUGHLIN,
Midland, Texas.
Of Counsel.

CERTIFICATE

The undersigned certifies that the above is not filed for delay but that intervening factors which are deemed sufficient to justify the filing of the Petition for Rehearing are—

(a) The fact that Petitioners' answering brief was not before the Court when certiorari was denied; and

(b) The denial of the writ without notation or opinion shows that this Court is not holding that an Illinois statute by its own force is or can be made a condition on the ownership of land in Texas.

A copy of the within and foregoing Petition for Rehearing has been furnished opposing counsel by depositing same in the United States Post Office with first class postage prepaid, addressed to Mr. William D. Neary, Thompson, Knight, Wright & Simmons, 2300 Republic National Bank Building, Dallas, Texas, which is the post office address of said counsel of record for Respondents, this day of March, 1962.

F. H. PANNILL